

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ALLY FINANCIAL INC., a Delaware
Corporation,

Plaintiff,

vs.

THOMAS D. GRETTER an Individual;
JOHN D. GRETTER, an Individual,

Defendants.

Case No. 4:15-cv-00051-SMR-HCA

DEFENDANT JOHN D.
GRETTER'S ANSWER AND
AFFIRMATIVE DEFENSES TO
COUNT II OF VERIFIED
COMPLAINT

Defendant John D. Gretter ("Defendant" or "John Gretter") for his Answer and Affirmative Defenses to Count II of Plaintiff Ally Financial's Verified Complaint, expressly denies all allegations contained in the Verified Complaint ("Complaint", ECF Doc. 1) unless otherwise expressly admitted herein, and further states:

88. Defendant incorporates and repleads his Answers to Paragraphs 1-87 of the Complaint as if fully stated in this Paragraph 88.

89. Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 89 and therefore denies them.

90. Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 90 and therefore denies them.

91. Defendant denies all allegations with regard to Defendant, but lacks information or knowledge sufficient to form a belief as to the truth of the allegations regarding Tom Gretter contained in Paragraph 91 and therefore denies them.

92. Defendant denies demand was made upon Defendant, but lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 92 and therefore denies them.

93. Defendant denies all allegations with regard to Defendant, but lacks information or knowledge sufficient to form a belief as to the truth of the allegations regarding Tom Gretter contained in Paragraph 93 and therefore denies them.

94. Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 and therefore denies them.

95. Defendant denies all allegations with regard to Defendant, but lacks information or knowledge sufficient to form a belief as to the truth of the allegations regarding Tom Gretter contained in Paragraph 95 and therefore denies them.

AFFIRMATIVE DEFENSES

Defendant has attempted in good faith to assert all defenses presently ascertainable to him and expressly reserves the right to amend this list as additional defenses come to light.

1. Plaintiff fails to state a claim for which relief may be granted.
2. Plaintiff's recovery is precluded, in whole or in part, by the doctrine of insubstantial performance.
3. Plaintiff's losses, if any, are attributable to the acts and omissions of individuals or entities other than Defendant.
4. Plaintiff's recovery is precluded, in whole or in part, by the doctrine of comparative fault.
5. Plaintiff's recovery is precluded, in whole or in part, by the doctrine of unclean hands.

6. Plaintiff's recovery is precluded, in whole or in part, by the doctrine of fraudulent inducement.

7. Plaintiff's recovery is precluded, in whole or in part, because one or more of the personal guaranties at issue were executed in a representative, rather than a personal; capacity.


8. Plaintiff's recovery is precluded, in whole or in part, by Plaintiff's extension of additional debt subsequent to, and without reasonable reliance, upon the alleged personal guarantee of Defendant.

9. Plaintiff's recovery is precluded, in whole or in part, by Plaintiff's failure to mitigate its losses, if any.

WHEREFORE, Defendant John D. Gretter respectfully requests that this Court deny Plaintiff Ally Financial Inc. the relief it seeks against Defendant John D. Gretter, dismiss Count II of the Verified Complaint, tax court costs and expenses to Plaintiff, plus such further relief that the Court deems appropriate.

Respectfully submitted,

/s/ Adam S. Tarr
ADAM S. TARR (# LI0025330)
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of
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ATTORNEYS FOR DEFENDANT
JOHN D. GRETTER

<p><u>Copy to:</u></p> <p>Mr. Thomas L. Flynn Mr. Douglas A. Fulton Brick Gentry, P.C. 6701 Westown Parkway, Suite 100 West Des Moines, IA 50266-7703</p> <p>Mr. Duane M. Geck Mr. Donald H. Cram Ms. Eleanor M. Roman Severson & Werson One Embarcadero Center, Suite 2600 San Francisco, CA 94111</p>	<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned certifies that the a true copy of this foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on _____ by: <u>October 30, 2015</u></p> <table border="0"><tr><td><input type="checkbox"/> U.S. Mail</td><td><input checked="" type="checkbox"/> CM/ECF</td></tr><tr><td><input type="checkbox"/> Hand Delivered</td><td><input type="checkbox"/> Certified Mail</td></tr><tr><td><input type="checkbox"/> Overnight Mail</td><td><input type="checkbox"/> E-Mail</td></tr></table> <p>Signature: </p>	<input type="checkbox"/> U.S. Mail	<input checked="" type="checkbox"/> CM/ECF	<input type="checkbox"/> Hand Delivered	<input type="checkbox"/> Certified Mail	<input type="checkbox"/> Overnight Mail	<input type="checkbox"/> E-Mail
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